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## SECTION 1700 - PUBLIC LANDS (SECTION 4(F), 6(F) AND FORESTS)

### SECTION 1710.00 - INTRODUCTION

This section includes information needed for projects that will affect Section 4(f) public lands and Section 6(f) outdoor recreation lands. These requirements often overlap with those for projects affecting historic properties (Section 106), and cultural and archaeological resources, which are discussed in [Section 1800](#). See also [Section 200](#) for guidance on preparing Section 4(f) and Section 106 reports for NEPA projects. The section also includes information needed for projects affecting state and national forest lands, which are designated for timber harvest. Projects affecting public forestlands are not subject to Section 4(f) or Section 6(f); however, other regulations apply.

**1710.01 Summary of Requirements.** The major legislative mandates and requirements discussed in this section are:

**Public Lands** – Section 4(f) of the Department of Transportation Act of 1966 (49 USC 303) applies to projects using a significant publicly owned park, recreation area, wildlife or waterfowl refuge, or historic site (23 CFR 771.135). Section 4(f) may also apply to Wild and Scenic Rivers (see [Section 1500](#)). Section 4(f) is a federal requirement and needs to be considered in any NEPA document [see [Section 300](#) and [Section 1800](#)].

However, a NEPA action does not always require a 4(f) evaluation. For example, if there is no Section 4(f) nexus, the NEPA document need only explain that Section 4(f) does not apply to the project. Always consult with the HQ Cultural Historian if it is not clear whether or not Section 4(f) applies to a specific project.

**Outdoor Recreation** – Section 6(f) of the Land and Water Conservation Funds (LWCF) Act applies to conversion of outdoor recreation property acquired or developed with grant assistance from an inter-agency Committee for Outdoor Recreation.

**Forest Lands** – An MOU between FHWA and the United States Forest Service (USFS) establishes procedures for coordinating transportation activities on National Forest Lands.

**1710.02 Abbreviations and Acronyms.** Abbreviations and acronyms used in this section are listed below. Others are found in the general list in the appendix.

DEQ	Idaho Department of Environmental Quality
DOI	United States Department of Interior
NF	National Forest
USFS	United States Forest Service
LWCF	Land and Water Conversation Funds

## SECTION 1720.00 - APPLICABLE STATUTES AND REGULATIONS

Projects that involve impacts to public lands and/or national forest are subject to the state and federal regulations summarized below. Note that some of the following laws and regulations apply to historic and archeological sites as well as to other public lands. See [Section 1800](#) for laws and regulations applying specifically to historic sites.

**1720.01 National Environmental Policy Act.** The National Environmental Policy Act (NEPA), 42 USC Section 4231, requires that all actions sponsored, funded, permitted, or approved by federal agencies undergo planning to ensure that environmental considerations such as impacts related to public lands are given due weight in project decision-making. Federal implementing regulations are at 23 CFR 771 (FHWA) and 40 CFR 1500-1508 (CEQ).). For details see [Section 200](#), and [Section 300](#).

**1720.02 Section 4(f) - Department of Transportation Act and Implementing Regulations.** Protection of certain public lands and all historic sites was originally mandated in Section 4(f) of the 1966 Department of Transportation Act. This section was repealed in 1983 and later codified without substantive changes as 49 USC 303. However, it is still referred to as Section 4(f) in the FHWA Environmental Procedures (23 CFR 771) and popularly by many ITD staff. Section 4(f) declares a national policy to preserve, where possible, “the natural beauty of the countryside and public park and recreation lands, wildlife and waterfowl refuges, and historic sites.” (Historic properties are identified through consultation with SHPO under Sec. 106 of National Historic Preservation Act. (36 CFR 800)

*Highway projects can cross these special lands only if there is no feasible and prudent alternative and the sponsoring agency demonstrates that all possible planning to minimize harm has been accomplished.*

The term feasible relates to practicable (doable) in that the action is capable of being done. The intent of the above statement appears to mean that if avoidance is possible, it must be used. The restrictor is the term “prudent” that implies care or reason. Care and reason are subjective terms that may mean different things depending on perspective. Using the term “extraordinary magnitude” from the 4(f) structure avoidance format, it would seem that a cost or engineering effort of extraordinary magnitude *is not* required to avoid a 4(f) property. Here again, extraordinary magnitude is subjective but may be easier quantified. For instance doubling the cost of an action may constitute an extraordinary magnitude. Rerouting an alignment to miss an abandoned historic building may be extraordinary magnitude and may not be prudent although it is feasible.

Any time a new alignment or expansion of an existing alignment threaten to impact a 4(f) property, the proposed alternatives must include an avoidance alternative. The avoidance design will document the information needed to determine if avoidance is feasible and prudent and if it may exhibit cost considerations of extraordinary magnitude.

In addition, before approving use of these lands for a transportation project, supporting information must demonstrate that there are unique problems or unusual factors involved in the use of alternatives that avoid these properties or that the cost, social, economic and environmental impacts, or community disruption resulting from such alternatives reach extraordinary magnitude. In addition to mandating protection of certain land uses, FHWA rules require that when the project’s impacts in the proximity of the protected area are so severe that the resources’ activities, features, or attributes are substantially impaired, then Section 4(f) is also called into effect even if

the project does not actually intrude into the protected use. This type of impact is referred to as “constructive use” (see 23 CFR 771.135(p)iii(2)). Constructive use could potentially include:

- Resources affected by noise levels.
- Aesthetic features of the resource compromised by the transportation facility.
- Access restricted, substantially diminishing the utility of the resource.
- Vibrations impair use of the resource and diminish the value of wildlife habitat.

FHWA must be consulted when evaluating a possible constructive use impact.

**1720.03 Section 6(f) Land and Water Conservation Funds Act.** This statute applies to all projects that impact recreational lands purchased or improved with land and water conservation funds. The Secretary of the Interior must approve any conversion of property acquired or developed with assistance under this act to other than public, outdoor recreation use.

**1720.04 DOT Design, Arts, and Architecture Program.** To further implement NEPA, Section 106(h) and Section 4(f), the Department of Transportation inaugurated its Design, Arts, and Architecture in Transportation Program in 1978. Outlined in DOT Order 5610.1C, revised Attachment 2, the program requires that environmental impact statements document the consideration of design quality in projects which involve public use areas or sensitive locations such as parks or historic districts.

## **SECTION 1730.00 - POLICY GUIDANCE**

**1730.01 Links to Policy.** <http://www.fhwa.dot.gov/search.html> At this site insert “4(f) Policy or 6(f) Policy and you will be linked to numerous sites discussing policy on all aspects of the 4(f) and 6(f) issues. There is too much information on this link to reproduce all the links at this site. <http://www.fhwa.dot.gov/legregs/directives/techadv/t664008a.htm>. This link will take you directly to FHWA 4(f) guidance.

**1730.02 Local Plans and Policies.** City and county comprehensive plans and parks and recreation plans may contain policy guidance on public lands, including significant trees or groves, wildlife habitat, parks, and recreation areas. These documents should be considered in preparing the public lands section of environmental documents. Also Consider State Parks and Rec. Dept., Idaho Dept. of Fish and Game and State Dept. of Lands (<http://www.accessidaho.org/topical.html>)

## **SECTION 1740.00 - TECHNICAL GUIDANCE**

**1740.01 Section 4(f) Evaluations.** The Section 4(f) evaluation is a separate analysis of impacts to covered resources that could result from one or more alternatives being considered for a transportation project. In addition to property acquisition, “constructive use” of Section 4(f) land may include impacts on aesthetics, access, air quality, noise levels, water quality, or land use in the area.

The use of Section 4(f) land may involve concurrent requirements of other federal agencies. Examples include consistency determinations for the use of public lands managed by the Bureau of Land Management (BLM), compatibility determinations for the use of land in the National Wildlife Refuge System and National Park System, determinations of direct and adverse effects on Wild and Scenic Rivers (see [Section 1500](#)), and approval of land conversion under Section

6(f) of the Land and Water Conservation Fund Act. Mitigations planned for the project should include measures to satisfy all such requirements. Nationwide or programmatic Section 4(f) evaluations and approvals have been prepared for certain transportation projects having minor impacts (see below).

**1740.01.01 ITD Section 4(f) Evaluation Checklist.** ITD no longer uses an evaluation checklist.

**1740.01.02 FHWA Guidance.** FHWA Technical Advisory T6640.8A (*Exhibit 300-4*) gives guidelines for preparing environmental documents and Section 4(f). Section IX gives detailed guidance on format and content of Section 4(f) evaluations. For details, see FHWA's home page: <http://www.fhwa.dot.gov/> Click on Legislation and Regulations, then FHWA Directives and Policy Memorandums, then FHWA Technical Advisories, then T6640.8A, or <http://www.fhwa.dot.gov/legregs/directives/techadvs/t664008a.ht>

FHWA's *Complete Section 4(f) Policy Paper as Revised June 7, 1989* provides comprehensive guidance on preparing Section 4(f) evaluations. The complete paper (html format), and the October 5, 1987 version plus 1989 revisions (pdf format) is available on FHWA's web site: - <http://www.fhwa.dot.gov/> Click on FHWA Programs, then Environment, then Environmental Guidebook, then Section 4(f) or <http://www.environment.fhwa.dot.gov/guidebook/index.asp>.

**1740.01.03 Section 4(f) Programmatic Evaluations.** As an alternative to preparing an individual Section 4(f) evaluation, ITD may in certain circumstances have the option of applying a programmatic evaluation. A programmatic Section 4(f) evaluation specifies conditions that, if met, will satisfy the requirements of Section 4(f) that there are no feasible and prudent alternatives and that all possible planning has been done to minimize harm. These conditions generally relate to the type of project, the severity of impacts to Section 4(f) property, the evaluation of alternatives, the establishment of a procedure for minimizing harm to the Section 4(f) property, and adequate coordination with appropriate entities. Section 4(f) park and recreation areas may have national, district, statewide or local significance.

FHWA has prepared four programmatic evaluations to be used for projects having impacts on resources covered by Section 4(f). A separate 4(f) evaluation is not needed for projects meeting the criteria set forth in these programmatic evaluations:

***Historic sites*** – Final Nationwide Section 4(f) Evaluation and Approval for Federally Aided Projects with Minor Involvements with Historic Sites (December 23, 1986).

***Historic Bridges*** – Programmatic Section 4(f) Evaluation and Approval for FHWA Projects that Necessitate the Use of Historic Bridges (July 5, 1983).

***Public parks, recreation lands, and wildlife and waterfowl refuges*** – Final Nationwide Section 4(f) Evaluation and Approval for Federally Aided Projects with Minor Involvements with Public Parks, Recreation Lands, and Wildlife and Waterfowl Refuges (December 23, 1989)

***Bikeways and walkways*** – Negative Declaration/Section 4(f) Statement for Independent Bikeway or Walkway Construction Projects (May 23, 1977). These documents are available online on FHWA's web site: <http://www.fhwa.dot.gov/> Click on FHWA Programs, then Environment, then Environmental Guidebook, then Section 4(f) or: <http://www.environment.fhwa.dot.gov/guidebook/index.asp>

The fact that the nationwide programmatic Section 4(f) evaluations are approved does not mean that these types of projects are exempt from or have advance compliance with the requirements of Section 4(f). Section 4(f) does apply to each of the types of projects addressed by the programmatic evaluations. Furthermore, the programmatic Section 4(f) does not relax the Section 4(f) standards; i.e., the same considerations apply to a programmatic 4(f) as do to an individual Section 4(f).

These programmatic Section 4(f) evaluations may be applied only to projects meeting the applicable criteria. How the project meets the criteria must be documented. The documentation needed to support the conclusions required by the programmatic Section 4(f) evaluation is comparable to the documentation needed for an individual Section 4(f) evaluation. These programmatic Section 4(f) evaluations streamline the amount of interagency coordination that is required for an individual Section 4(f) evaluation. Interagency coordination is required only with the official(s) having jurisdiction and not with the federal Department of Interior (DOI), Department of Agriculture, or Department of Housing and Urban Development (unless the federal agency has a specific action to take, such as DOI approval of a conversion of land acquired using Land and Water Conservation Funds). See *Exhibit 1800-3* for Transportation Enhancement 4(f) Programmatic MOU.

**1740.01.04 Projects in Wild and Scenic River Corridors.** An FHWA Administrator Memorandum (June 6, 1978) discusses the applicability of Section 4(f) to projects in Wild and Scenic River Corridors. The document is online at FHWA's web site: <http://fhwa.dot.gov/> Click on FHWA Programs, then Environment, then Environmental guidebook, then Section 4(f) or <http://www.environment.fhwa.dot.gov/guidebook/index.asp>.

#### **1740.02 Section 6(f) Evaluations.**

**1740.02.01 ITD Report, Outdoor Recreation Property (6(f)).** ITD no longer uses this checklist.

**1740.02.02 FHWA Guidance.** FHWA's online Environmental Guidebook contains documents on wilderness areas and Section 6(f) properties. Available on FHWA's web site: <http://www.fhwa.dot.gov/> Click on FHWA Programs, then Environment, then Environmental Guidebook, then Wilderness Areas/Section 6(f) Properties or: <http://www.environment.fhwa.dot.gov/guidebook/index.asp>.

#### **1740.03 ITD Environmental GIS Workbench.** (Currently under construction)

**1740.04 Forest Practices Application.** This application is required when project activities affect forest lands, defined as land capable of supporting a merchantable stand of timber and is not being in a manner compatible with timber growing.

### **SECTION 1750.00 - NON-ROAD PROJECT REQUIREMENTS**

Rail, airport, and non-motorized transport systems are generally subject to the same policies, procedures, or permits that apply to road systems.

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